

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

EMILY M. NEWMAN,

Plaintiff,

Case No. 21-cv-800-pp

v.

ANDREW M. SAUL,

Defendant.

**ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO PROCEED
WITHOUT PREPAYING THE FILING FEE (DKT. NO. 3)**

The plaintiff has filed a complaint seeking judicial review of a final administrative decision denying her claim for disability insurance benefits under the Social Security Act. Dkt. No. 1. She also filed a motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

To allow the plaintiff to proceed without paying the filing fee, the court first must decide whether the plaintiff can pay the fee; if not, it must determine whether the lawsuit is frivolous. 28 U.S.C. §§1915(a) and 1915(e)(2)(B)(i).

Based on the facts in the plaintiff's affidavit, the court concludes that she does not have the ability to pay the filing fee. The plaintiff's affidavit indicates that she is not employed, she is not married, and she has no dependents she is responsible for supporting. Dkt. No. 3 at 1. The plaintiff lists no monthly income and no monthly expenses; she states that she does not own a car, her home, or any other property of value; she indicates that she has a checking or

savings account, but does not provide the balance. *Id.* at 2-4. The plaintiff states, “Although I currently do not have bills in my name, i.e. car payment, phone bill, etc. At one point I did when working. Due to the progression of my medical condition, I had to quit my job and my parents had to take over the payments.” *Id.* at 4. The plaintiff included a letter from her father, stating that he has taken over her financial responsibilities “[s]ince the beginning of 2019 when she had to separate from her employment.” Dkt. No. 3-1. The plaintiff has demonstrated that she cannot pay the \$350 filing fee and \$52 administrative fee.

The next step is to determine whether the case is frivolous. A case is frivolous if there is no arguable basis for relief either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992) (quoting *Nietzke v. Williams*, 490 U.S. 319, 325 (1989); *Casteel v. Pieschek*, 3 F.3d 1050, 1056 (7th Cir. 1993)). A person may obtain district court review of a final decision of the Commissioner of Social Security. 42 U.S.C. §405(g). The district court must uphold the Commissioner’s final decision as long as the Commissioner used the correct legal standards and the decision is supported by substantial evidence. *See Roddy v. Astrue*, 705 F.3d 631, 636 (7th Cir. 2013).

The plaintiff’s complaint indicates that she was denied Social Security benefits for lack of disability, that she is disabled and that the conclusions and findings of fact by the Commissioner when denying benefits are not supported by substantial evidence and are contrary to federal laws and regulations. Dkt. No. 1 at 1-2. At this early stage in the case, and based on the information in

the plaintiff's complaint, the court concludes that there may be a basis in law or in fact for the plaintiff's appeal of the Commissioner's decision, and that the appeal may have merit, as defined by 28 U.S.C. §1915(e)(2)(B)(i).

The court **GRANTS** the plaintiff's motion for leave to proceed without prepaying the filing fee. Dkt. No. 3.

Dated in Milwaukee, Wisconsin this 6th day of July, 2021.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge